Supreme Court, U.S.
FILED

No. 01- 01 468 SEP 10 2001

IN THE

Supreme Court of the United States

SEFERINA GARCIA,

Petitioner,

v.

ROGER ERNST & ASSOCIATES and
THE COUNTY OF SAN JOAQUIN,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL, STATE OF CALIFORNIA,
THIRD APPELLATE DISTRICT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in the absence of exigent circumstances, the warrantless search and seizure of an occupied house, and all of the personal property contained therein, and the summary eviction of persons therefrom pursuant to asset forfeiture statutes violate the Fourth Amendment.

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Seferina Garcia respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeal of the State of California, in and for the Third Appellate District.

OPINIONS BELOW

The opinion of the Court of Appeal (App., 1a-24a) is unreported. The opinion of the trial court (App., 25a-28a) is unreported.

STATEMENT OF JURISDICTION

The California Court of Appeal, Third Appellate District, entered its judgment on March 20, 2001. Petitioner timely petitioned for hearing to the California Supreme Court, the state court of last resort, which petition was denied on June 13, 2001 (App., 29a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Fourth Amendment, which provides:

> The right of the People to be secure in their persons, houses, papers, and affects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

This case involves the warrantless search and seizure of petitioner's home and every piece of personal property contained in her home, including clothing, photo albums, and other highly personal effects, pursuant to California asset forfeiture statutes. This case graphically incarnates this Court's observation in *United States v. Good Real Property*, 510 U.S. 43, 61, 126 L. Ed. 2d 490, 114 S. Ct. 492 (1993):

> At stake in this and many other forfeiture cases are the security and privacy of the home and those who take shelter within it.

On March 21, 1995, respondents, County of San Joaquin, and its agent, Roger Ernst & Associates, without notice, summarily entered, searched, and seized petitioner's home, evicted her and seized and disposed of every piece of personal property in her home, including food, beds, furniture, pictures, photo albums, clothing, and other personal effects. This search and seizure was executed without the benefit of any warrant or writ of possession or execution. There were no exigent circumstances. The basis for the search and seizure was California's asset forfeiture law. There was and has been no allegation nor evidence of drugs or drug dealing at the premises. (App., 4a-5a) Petitioner brought an action for violation of her civil rights under 42 U.S.C. § 1983 alleging unreasonable search and seizure and disposition of her property. The trial court granted respondents' motion for summary judgment, finding the warrantless search and seizure were permitted by the California asset forfeiture law. (App., 25a-28a)

Petitioner appealed. The California Court of Appeals, in and for the Third Appellate District, affirmed. It held that *California Health and Safety Code* § 11471(b) allowed the warrantless search, seizure, and disposal of all of petitioner's personal property in her house, permitted the warrantless search and seizure of petitioner's house, and the eviction of her from her house without warrant, writ of possession or comparable order. (App., 17a-20a)

The appellate court reasoned that, since the State had obtained legal title to the real property by virtual of a default judgment[1] in an underlying action for forfeiture of the real property only (App. 3a-4a), this title to the real property allowed for a warrantless search and seizure under *California Health and Safety Code* § 11471(b), which provides in relevant part:

> Seizure without process may be made if any of the following circumstances exist: . . . (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a . . . forfeiture proceeding based upon this division.

Petitioner maintained that the Fourth Amendment warrant requirement applies even when acting pursuant to a judgment for real property when such action involves seizure of and entry into a home, and the search and seizure in its interior, citing inter alia *Blair v. Pitchess*, 5 Cal.3d 258, 273, 486 P.2d 1242 (1971):

> Invasion into private places in execution of claim and delivery processes are searches and seizures within the meaning of the Fourth Amendment.

1. The default judgment was taken without petitioner's actual knowledge and was never served on her. (App., 12a-13a)

and as such "require a warrant by a magistrate upon a showing of probable cause." Petitioner also cited *Soldal v. Cook County, Illinois*, 506 U.S. 56, 69, 121 L. Ed. 2d 450, 113 S. Ct. 538 (1992):

> What matters is the intrusion on the people's security from governmental interference. Therefore, the right against unreasonable seizures would be no less transgressed if the seizure of the house was undertaken to collect evidence, verify compliance with a housing regulation, *effect an eviction by the police*, or on a whim, for no reason at all.

(Emphasis added.)

Thereafter, petitioner timely filed a petition for review to the California Supreme Court, which petition was denied on June 13, 2001.

Thus, in sum, the issue of first impression presented here is whether the warrant requirements of the Fourth Amendment can be trumped and/or supplanted by forfeiture laws purporting to allow a warrantless search and seizure of a home and personal property in the home.

THE FEDERAL ISSUE IS PROPERLY BEFORE THIS COURT

The Fourth Amendment search and seizure issue was properly raised before the courts below at all stages of the proceeding. The violation of the Fourth Amendment is expressly plead in petitioner's complaint in numerous paragraphs. Paragraph 30 alleges:

> On or about March 21, 1995, defendants . . . acted to deprive plaintiff of her real property interests in said premises and her personal property . . . at said premises without a warrant.

Further, Paragraph 37 alleges:

> On or about March 21, 1995, defendants, and each of them (except Foppianos), acting under color of law, violated plaintiff's civil rights under the Fourth Amendment of the U.S. Constitution . . . by wrongfully seizing plaintiff's real and personal property interests, by forcefully ejecting, and evicting her from her place of residence. . . .

The Fourth Amendment issue was repeatedly raised in petitioners' opposition to the motion for summary judgment in the trial court, inter alia, to wit:

> There was no search warrant or court order allowing seizure of the personal property. A seizure of personal property is not possible without an appropriate search warrant or order of court. *Soldal v. Cook County, Illinois* (1992) 506 U.S. 56, 121 L.Ed.2d 450, 113 S. Ct. 538; *Conner v. City of Santa Ana* (1990) 897 F.2d 1487, 1492.

(Opposition to Summary Judgment, pp. 5-6.)

* * *

> Not only was plaintiff's personal property illegally seized, but access to and the search for the personal property was also acquired without court

> order or search warrant, i.e. the warrantless invasion of plaintiff's place of residence and home. . . . As the United States Court has stated: "[a]t the risk of belaboring the obvious . . . [the individual's expectation in the privacy of a residence] is plainly one that society is prepared to recognize as reasonable." *United States v. Karo* (1984) 468 U.S. 705, 714. . . . Because of respect for the sanctity of the home, "the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Payton v. New York* (1980) 445 U.S. 573, 590. Therefore, warrantless searches and seizures in the home are "presumptively unreasonable." *Id.*

(Opposition to Summary Judgment, pp. 6-7.)

The trial court rejected these Fourth Amendment arguments in its order granting summary judgment by ruling that the actions of respondents were permitted by the California asset forfeiture law. (App., 25a-28a)

Petitioner appealed the trial court's decision to the California Court of Appeal submitting the issue as follows:

> Whether the County and its agent, Roger Ernst, violated plaintiff's privacy rights and rights against unreasonable searches and seizures, forcible entry, and various state law torts by invading plaintiff's place of residence without warrant or court order, seizing said residence, and seizing and disposing of all property contained therein and forcefully evicting plaintiff from said residence, all without a warrant or court order.

The Court of Appeal recognized that petitioner was claiming that "the entry, search and seizure" of petitioner's residence and personal property "require a warrant or comparable order under the Fourth Amendment to the United States Constitution." (App., 15a) But the Court of Appeal rejected petitioner's claim and ruled that the warrantless search and seizure were authorized pursuant to *California Health and Safety Code* § 11471(b). (App. 17a-20a)

Thereafter, petitioner petitioned the California Supreme Court for review asserting the issue for review as follows:

> Does California forfeiture law permit the *warrantless* entry into, search and seizure of a person's home, the *warrantless* seizure and disposition of *all* personal property in the home, and a *warrantless* eviction of the person from the home?

Petitioner argued that the Fourth Amendment required a warrant, citing inter alia *Payton v. New York*, 445 U.S. 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980) and *Soldal v. Cook County, Illinois*, 506 U.S. 56, 121 L. Ed. 2d 450, 113 S. Ct. 538 (1992). The petition for review was denied without explanation. (App. 30a)

REASONS FOR GRANTING THE PETITION

A. THIS CASE PRESENT AN ISSUE EXPRESSLY LEFT UNADDRESSED BY THIS COURT IN *CALERO-TOLEDO v. PEARSON YACHT LEASING CO.*

The question presented here is the one that this Court expressly left unanswered in *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, at 679-80, n.14; 94 S. Ct. 2080, 40 L. Ed. 2d 452 (1974):

> We have no occasion to address the question whether the Fourth Amendment warrant or probable cause requirements are applicable to seizure under [forfeiture statutes].

Although the Court partially answered this question as to "contraband" vehicles seized in public in *Florida v. White*, 526 U.S. 559, 119 S. Ct. 1555, 143 L. Ed. 748 (1999), this question remains unaddressed as to the search and seizure of homes and property in them.

B. THIS CASE OFFERS AN OPPORTUNITY TO RESOLVE A SPLIT OF AUTHORITY IN THE CIRCUITS AND DISTRICT COURTS

This case presents this Court with an opportunity to resolve a conflict among the Court of Appeals and District Courts on the constitutional question presented, i.e. may federal asset forfeiture laws (i.e. 21 U.S.C. § 881) create a new exception to the Fourth Amendment warrant requirements. *Compare United States v. A. Single Family Residence in Real Property Located at 900 Rio Vista Blvd.*, 803 F.2d 625, 632 (11th Cir. 1986), holding that no Fourth

Amendment warrant is required for seizure of property, pursuant to 21 U.S.C. § 881 and Rule C of the Supplementary Rules for Certain Admiralty and Maritime Claims, with *United States v. Pappas*, 613 F.2d 324, 328-329 (1st Cir. 1979) holding that 21 U.S.C. § 881 and Rule C of the Supplementary Rules for Certain Admiralty and Maritime Claims do not dispense with the Fourth Amendment warrant requirements. *See also Application of Kingsley*, 614 F. Supp. 219, 223 (D. Mass. 1985) and *United States v. Life Insurance Co. of Virginia*, 647 F. Supp 732, 741-742 (W.D.N.C. 1986).

C. THIS IS A QUESTION OF NATIONWIDE IMPORTANCE

This question is of recurring paramount importance to the Federal Government and to various individual states since the Federal Government and numerous states have forfeiture laws comparable to the California law allowing warrantless search and seizure of property subject to forfeiture. *See, e.g.*, 21 U.S.C. § 881(b), Colorado Revised Statutes 18-17-106(3), Florida Statutes 932.703(2)(a), 720, Illinois Compiled Statutes 570 § 505(b), Michigan Compiled Laws § 333.7522, Revised Code of Washington 69.50.505(b), and Wisconsin Statutes § 961.55(2). The warrantless search and seizure of a residence and all personal property therein is a case of first impression for this Court in this country's ongoing conflict and tension between fundamental constitutional rights and forfeiture laws. *See, e.g., Calero-Toledo v. Pearson Yacht Leasing Co., supra* (1974); *United States v. Good Real Property, supra*, *Austin v. United States*, 509 U.S. 602, 125 L. Ed. 2d 488, 113 S. Ct. 2801 (1993), *Florida v. White, supra* (1999). Again, as noted in *United States v. Good Real Property, supra*, at 61: "At stake in forfeiture cases are the security and privacy

of the home and those who take shelter within it." This case presents this Court squarely with the opportunity to decide whether the privacy and security of the home trump forfeiture laws purporting to dispense with the Fourth Amendment warrant requirement. This case allows the Court definitively to define the interplay between asset forfeiture and the Fourth Amendment.

D. THE DECISION BELOW WAS ERRONEOUS

Here, the Court of Appeal held that California forfeiture law (*Health & Safety Code* § 11471(b)) permitted:

1. A *warrantless* entry into, search and seizure of petitioner's house;

2. A *warrantless* search, seizure and disposition of every piece of personal property that petitioner owned in the house, including but not limited to family photo albums, personal effects, clothes, bedding, food – *everything without exception*; and

3. The summary eviction of plaintiff from her house *without warrant or notice.*

The decision below is clearly erroneous since, as this Court has made repeatedly clear, entry into and seizure in the home, absent exigent circumstances, require a warrant under the Fourth Amendment. Thus, the forfeiture statutes purporting to allow warrantless search and seizure of and in a home are on their face and as applied in conflict with the express language of the Fourth Amendment, and this Court's cases interpreting it, requiring a warrant, absent exigent

circumstances, prior to the entry of a home so as to protect privacy and property interests. As noted in *Florida v. White, supra*:

> "Contemporaneously with the adoption of the Fourth Amendment," Congress distinguished "the necessity for search warrant between goods subject to forfeiture, when concealed in a dwelling, house or similar place, and like goods in course of transportation and concealed in a movable vessel where they readily could be put out of reach of a search warrant."

The subject decision allowing a warrantless search and seizure of petitioner's house and all personal property contained therein cannot be reconciled with this Court's Fourth Amendment cases requiring warrants for search and seizure within a house. Thus, it is clearly erroneous.

This Court has stated "[a]t the risk of belaboring the obvious . . . [the expectation in the privacy of a residence] is plainly one that society is prepared to recognize as reasonable." *United States v. Karo*, 468 U.S. 705, 714, 82 L. Ed. 2d 530, 104 S. Ct. 3296 (1984). The Supreme Court has repeatedly emphasized that "[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion." *Silverman v. United States*, 365 U.S. 505, 511, 5 L. Ed. 2d 734, 81 S. Ct. 679 (1961). Because of the respect for the sanctity of the home:

> In terms that apply equally to seizures of persons and to seizures of personal property, the Fourth Amendment has drawn a firm line at the entrance

> to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.

Payton v. New York, 445 U.S. 573, 590, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980). Therefore, warrantless searches and seizures in the home are "presumptively unreasonable." *Id.*

As stated by this Court in *Soldal v. Cook County, Illinois, supra*, at p. 69, in applying the Fourth Amendment to a civil context:

> In our view, the reason why an officer might enter a house or effectuate a search is wholly irrelevant to the threshold question of whether the Amendment applies. What matters is the intrusion on the people's security from governmental interference. Therefore, the right against unreasonable seizures would be no less transgressed if the seizure of the house was undertaken to collect evidence, verify compliance with a housing regulation, *effect an eviction by the police*, or on a whim, for no reason at all.

(Emphasis added.)[2]

The appellate court opinion casts aside such clear Fourth Amendment precedent, not to mention common law tradition that one's home is one's castle. Without the rights against unreasonable search and seizure/right to property, all other rights secured by the Constitution and our tradition of freedom become meaningless. As stated by this Court in *United States v. Good Real Property, supra*, at 53-54:

2. Here, respondents did in fact seize petitioner's house to "effect an eviction" of petitioner.

> Good's right to maintain control of his home, and to be free from governmental interference, is a private interest of historic and continuing importance.

This Court continued at page 61:

> The constitutional limitations we enforce in this case apply to real property in general, not simply to residences. That said, the case before us well illustrates an essential principle: Individual freedom finds tangible expression in property rights. *At stake in this and many other forfeiture cases are the security and privacy of the home and those who take shelter within it.*

(Emphasis added.)

If the state may by simple legislative act dispense with the warrant requirement of the Fourth Amendment, then the state is empowered to seize, arrest, imprison, and/or destroy *first*, and then ask questions later. As recognized by this Court in *Marshall v. Barlow's Inc.*, 436 U.S. 307, 98 S. Ct. 1816, 56 L. Ed. 2d 305 (1978), such a general warrant approach is rejected by the Fourth Amendment:

The decision below exalts an unserved judgment for real property to allow the warrantless entry onto the property, and search and seizure of not only the real property, but everything contained thereon, notwithstanding the fact that the judgment does not address any item of personal property nor does the judgment allow entry onto the property. (App., 30a-32a) The subject judgment was a default judgment that was entered without any notice to petitioner (App., 7a,

13a) and was executed upon without any writ of execution or writ of possession. It defies case law to allow a judgment alone to suffice for purposes of a search and seizure of an occupied home and of personal property in the home. As the California Supreme Court held in *Blair v. Pitchess, supra*, at 273:

> Invasion into private places in execution of claim and delivery processes are searches and seizures within the meaning of the Fourth Amendment.

Such an invasion requires "a warrant issued by a magistrate upon probable cause." *Id. See also Laprease v. Raymours Furniture Co.*, 315 F. Supp. 716 (N.D.N.Y. 1970) (three-judge court). Here, respondents not only invaded petitioner's home, but seized everything in it, and evicted her. Thus, even if a judgment is in place, the Fourth Amendment still requires a warrant or similar court order prior to its execution involving entry into a private residence. This principle was recognized also in *Soldal v. Cook County, Illinois, supra* when this Court noted at p. 67:

> To begin, our decision will have no impact on activities such as repossession or attachments if they involve entry into the home, intrusions on individuals' privacy, or interference with their liberty, because they would implicate the Fourth Amendment even on the Court of Appeals' own terms.

Not only was the privacy protection of the Fourth Amendment violated by the entry into petitioner's home, but the protection of property aspect of the Fourth Amendment was also manifestly violated. As the Court made clear in

Soldal v. Cook County, Illinois, supra, at 62-64, the Fourth Amendment "protects property as well as privacy". Here, the court below allowed the wholesale seizure and disposition of all petitioner's personal property without regard to probable cause, much less a warrant requirement. Under *Soldal, supra*, it is clear that to seize personal property within the confines of a home, in the absence of exigent circumstances, a warrant must first be procured. *Id.*, 65-66. *See also Payton v. New York, supra*, 590.

CONCLUSION

This Petition should be granted because it tenders:

1. an issue of Fourth Amendment law expressly left unanswered in previous Supreme Court decisions regarding asset forfeiture;

2. a recurring issue of national importance — the sanctity of our homes;

3. an issue that splits the Circuit and District Courts; and

4. an issue involving fundamental constitutional rights that was wrongly decided below in clear disregard of this Court's precedents.

Respectfully submitted,

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Dated: September 10, 2001

APPENDIX

APPENDIX A — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT (SAN JOAQUIN) DATED AND FILED MARCH 20, 2000

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

C032796
(Super. Ct. No. 287280)

SEFERINA GARCIA,

Plaintiff and Appellant,

v.

ROGER ERNST & ASSOCIATES et al.,

Defendant and Respondent.

This case involves a collateral attack on a default judgment by which the People of the State of California declared the house and fixtures, which plaintiff, Seferina Garcia, owned with Miquel Yanez, forfeited pursuant to California's asset forfeiture law, predicated upon the view the property was purchased from the proceeds of narcotic trafficking by Yanez. (Health & Safety Code, § 11470 et seq.)[1]

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1. A reference to a section is the Health and Safety Code unless otherwise noted.

Appendix A

The defendants and respondents on appeal are: the County of San Joaquin (County); auctioneer Roger Ernst & Associates (Roger Ernst); Ernest and Jeri Foppiano (Foppianos), the purchasers of the property from the State pursuant to the judgment of forfeiture; and Foppianos' lender, Home Savings of America (Home Savings).

In the underlying asset forfeiture action, the People obtained a default judgment of forfeiture of the real property after the court struck Seferina Garcia's answer to the complaint for failure to respond to the People's request for discovery. Garcia did not appeal from the judgment in a timely manner.

In the present action, Seferina Garcia seeks damages and the return of the real property on the grounds the default judgment, the basis of the state's deed to the Foppianos, is void for lack of notice to her, and the ensuing sale of property did not operate to transfer valid title to the property.[2] Garcia also seeks damages for the conversion of her personal property on the ground the seizure of the property was made without a warrant.

The case comes before us upon the trial court's grant of summary judgment for all defendants. We will affirm the judgment regarding the real property on the ground that, although the judgment of forfeiture was based in part on the failure to give Seferina Garcia required notice, she cannot

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2. Although Garcia attempts to vacate the default judgment entered against Yanez as well, her causes of action are personal to her. This action affects her interests only not the interests of any co-owners of the property.

show she was harmed by the failures because she was given proper notice of the sanctions hearing and the hearing at which the judgment of default was entered.

As to the claim for conversion of her personal property by seizure at the time possession was taken of the real property, the seizure was proper as incident to the lawful seizure of the real property following the forfeiture judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The Underlying Action

This case arises on summary judgment. "The purpose of a summary judgment proceeding is to permit a party to show that material factual claims arising from the pleadings need not be tried because they are not in dispute." (*Andalon v. Superior Court* (1984) 162 Cal.App.3d 600, 605.) A triable issue of material fact is shown if an inference of the fact is reasonably deducible from the evidence tendered in the summary judgment proceeding and no conflicting inference can be drawn.

On February 3, 1993, the district attorney filed a complaint for forfeiture of the real property located at 1964 North Filbert Street in the City of Stockton, naming the plaintiff and Miquel Yanez as defendants. The complaint contains the following pertinent allegations.

> "This is an action for forfeiture of the defendant property pursuant to the provisions of Health and Safety Code section 11470 et seq.

brought on behalf of the People of the State of California."

"The defendant property is described as the Land, Buildings & Fixtures located at 1964 North Filbert Street, Stockton, California, . . . the approximate aggregate value of the defendant property is $75,000."

"Miquel Yanez and Seferina Garcia are the owners of record of the defendant property by a grant deed dated August 3, 1992. Miquel Yanez'[s] true name is Octavio Garcia Garcia and he is also known as Christopher Mena."

"The defendant property was acquired with proceeds traceable to transactions for controlled substances, in that Octavio Garcia Garcia engaged in trafficking in large quantities of marijuana and purchased the defendant property, or paid loans secured by the defendant property, with the proceeds of such trafficking."

"The defendant property is subject to forfeiture pursuant to subdivision (f) of section 11470 of the Health and Safety Code in that the defendant property is proceeds traceable to an exchange for a controlled substance."

The complaint does not allege that Seferina Garcia was a party to a drug transaction or had any knowledge the real property was acquired by means of such a transaction. Garcia's declaration in opposition to the motion for summary

judgment avers that her interest in the property was "earned from my own work as a farm laborer and as a restaurant helper and money that was loaned to me." She also avers that she never was "involved in any drug transactions on the property . . . or elsewhere" nor had any drug transactions occurred on the property.

On or about April 15, 1993, Seferina Garcia filed a verified answer to the complaint admitting she was an owner of the property but denying the property was acquired with proceeds traceable to transactions for controlled substances. On October 29, 1993, the trial court entered an order allowing Garcia's attorney to withdraw.[3] The declaration of Garcia's former counsel in support of his motion to withdraw listed two addresses for Seferina Garcia — a residence address at 1964 North Filbert and a mailing address at 2512 East Lafayette, both in Stockton. However, the order allowing withdrawal, filed approximately one month after the declaration, listed only the North Filbert address. That order, however, was served by mail addressed to 4911 Elvin Street in Stockton, care of Armando Juarez.

In her declaration opposing the motion for summary judgment, Seferina Garcia states: "At all [pertinent] times . . . I did not reside at 2512 East Lafayette Street, Stockton, California or 4911 Elvin Street, Stockton, California nor did I maintain either of these addresses as a mailing address. At all [pertinent] times . . . my residence and mailing address was 1964 North Filbert Street, Stockton, California 95204."

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3. Garcia avers in her declaration in opposition to summary judgment that she was unsuccessful in obtaining further legal representation until June 21, 1995.

Appendix A

On November 4, 1993, an order was issued requiring Seferina Garcia to respond to the district attorney's demand for production of documents within 15 days. The record does not contain a proof of service. Given the various addresses at which Garcia was served, no reasonable inference can be drawn that the order was served on Garcia at the North Filbert Street address.

On November 19, 1993, the trial court served by mail a notice to Seferina Garcia that a "court trial assignment" would be held on December 28, 1993. The proof of service indicates it was mailed to the North Filbert Street address. Garcia did not attend that proceeding.

On December 1, 1993, a motion for discovery sanctions, entitled "Notice of Motion and Motion for Terminating Sanctions," was served by mail addressed to Seferina Garcia, 1964 North Filbert, Stockton, California. The notice and motion are not part of the record but it can reasonably be inferred that December 21 was the date set out in the notice for the hearing as well as the grounds for the motion.

On December 21, 1993, the trial court entered an order striking Seferina Garcia's "answer filed April 15, 1993. . . ."[4]

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4. Because the court order did not strike the last answer on file, the district attorney filed a motion nunc pro tunc to correct the order to strike plaintiff's operative answer. The trial court granted the motion nunc pro tunc, and on October 23, 1998, we upheld the order on appeal. (*The People v. Land, Buildings and Fixtures Located at 1964 North Filbert, Stockton, California* (1998).) We take judicial notice of the file in this appeal pursuant to Garcia's request.

Seferina Garcia made no appearance at the hearing. Although the motion for sanctions was served by mail addressed to the North Filbert address, the order striking the answer was served by mail addressed to 2512 East Lafayette Street in Stockton.

The record next contains a minute order, entitled "Court Trial Assignment" dated December 28, 1993, the date previously set for a trial court assignment, notice of which had been sent to the North Filbert Street address, stating: "Counsel reported Octavio Garcia defaulted in May, Ayala, Guzman & Vasquez are not claimants & Serafina [*sic*] Garcia & Yanez were sanctioned out. Default Judgment & order signed." It also states that Seferina Garcia made no appearance.

The record contains a default judgment, dated December 28, 1993, which, in pertinent part, forfeits Seferina Garcia's interest in the real property at 1964 North Filbert Street, Stockton, based upon averments that Garcia's answer was stricken on December 21, 1993, and that she failed to appear and answer within the time allowed by law. No proof of service of the judgment appears in the record. A second default judgment was entered October 12, 1994. This judgment was served by mail addressed to the East Lafayette address.

The Foppianos purchased the real property at auction on May 11, 1995. The grant deed from the state to the Foppianos declares that it is based on the second default judgment, that it was "EXECUTED AND DELIVERED PURSUANT TO THAT CERTAIN 'DEFAULT JUDGMENT

AND ORDER BY COURT' DATED 10-12-94 RECORDED 10-24-94 . . . ."

The facts relating to the seizure of the personal property are set forth below in the Discussion of the merits of the seizure.

This Action

Seferina Garcia filed this action on July 10, 1995. The complaint alleges in pertinent part that the County wrongfully brought a forfeiture action which is void on its face because (a) no default was entered against Garcia or Yanez and thus the default judgment is void on the face of the judgment; (b) no notice of the motion requesting the entry of default judgment was given to Garcia or Yanez as required by Code of Civil Procedure sections 2023, 1010, and 1014; (c) no notice of the hearing for entry of default judgment was given Garcia or Yanez in violation of the due process clauses of the California and United States Constitution; (d) the trial court struck Garcia's and Yanez's answer upon a motion that failed to provide[ ] adequate notice thereof; (e) on or about March 21, 1995 the defendants wrongfully evicted plaintiff from her place of residence at 1964 North Filbert Street, Stockton, California; (e) on the same date defendants wrongfully deprived plaintiff of her personal property without warrant and without due process of law.

The Foppianos and Home Savings brought a motion for summary judgment, as did County and Roger Ernst.

As to the motion of the Foppianos and Home Savings, the trial court found: (1) Seferina could not bring a collateral

action because the default judgment in the underlying action was not void on its face; (2) the court held the underlying default judgment was valid and enforceable; and (3) the Foppianos were a bona fide purchaser of the property without actual or constructive knowledge of Seferina's claim of interest.

As to County and Roger Ernst's motion, the trial court found: (1) Seferina could not bring a collateral action because the default judgment in the underlying action was not void on its face; (2) the district attorney was not acting as a representative of County, but of the State of California, thus County is an improper party to the action; (3) Roger Ernst's only involvement was in auctioning the property pursuant to court order; (4) Seferina has no standing to challenge the forfeiture of personal property because she failed to file a timely claim pursuant to section 11488 et seq.

DISCUSSION

This case comes to us after a grant of summary judgment. A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).)

A defendant moving for summary judgment may establish that he or she is entitled to judgment either by negating a necessary element of the plaintiff's case or by establishing a complete defense. (*Fireman's Fund Ins. Co. v. Fibreboard Corp.* (1986) 182 Cal.App.3d 462, 465.)

Appendix A

To defeat a summary judgment, plaintiff has the burden of showing that defendant failed its burden or there is a material triable issue of fact with respect to the defense or the negated element. (*Ibid*; *Chern v. Bank of America* (1976) 15 Cal.3d 866, 873.)

I

Collateral Attack on Default Judgment

We turn first to the defendants' argument that plaintiff cannot collaterally attack the default judgment in the earlier action because it was not void on its face.

Plaintiff contends the court acted in excess of its jurisdiction because she was denied due process as the result of lack of notice in the forfeiture case.

"A collateral attack will lie only for a claim that the judgment is void on its face for lack of personal or subject matter jurisdiction or for the granting of relief which the court has no power to grant." (*Molen v. Friedman* (1998) 64 Cal.App.4th 1149, 1156; *Becker v. S.P.V. Construction Co.* (1980) 27 Cal.3d 489, 493.) In order for the judgment to be void on its face, the defects must be shown without going outside the record. (8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 12, p. 519.)

Appendix A

A

The Effect of Our Prior Decision

The defendants were not parties to the prior action and are not bound by the law of the case. However, the Foppianos' sought and we granted judicial notice of the opinion in that case and the defendants rely on it in the case in arguing this appeal. They seek to use it as a shield against the claims in the present action. Accordingly, the issues resolved in the prior appeal are before us on this appeal.

The defendants claim that our prior opinion held the default judgment was a valid judgment. This is incorrect. In our prior opinion, we addressed the question whether the nunc pro tunc order was an appealable order. In order to answer that question, we had to determine whether the order affected the first default judgment. We held that judgment was invalid prior to the nunc pro tunc order because the judgment had been entered when Seferina Garcia's answer was on file. The nunc pro tunc order effectively struck Seferina's answer, curing the invalidity. Our holding cannot be read to resolve anything other than the issue before us. We did not hold that the default judgment was valid as against any other attack.

We did note in our prior opinion that the second default judgment was of no force and effect because there can be but one final judgment and the second judgment did not operate to vacate, modify, or dispose of the first judgment by any means provided by law. However, this does not mean that the deed based on the second judgment is based on a

void judgment. The technical nature of the invalidity of the second default judgment does not preclude relating the second judgment back to the first default judgment. We do so and view the deed as predicated upon the first default judgment, entered on December 28, 1993. Accordingly, it is to the validity of that judgment that we turn.

B

The Lack of Notice

"[T]he general rule [is] that collateral attack will not be allowed where there is fundamental jurisdiction even though the judgment is contrary to statute." (*Pacific Mut. Life Ins. Co. v. McConnell* (1955) 44 Cal.2d 715, 727.) There are, however, recognized exceptions, as where unusual circumstances were present which prevented an earlier and more appropriate attack. (*Ibid.*) "A court with jurisdiction of the parties and subject matter of a cause, may nevertheless conduct the proceeding in such a manner as to preclude a fair hearing, and thus, in some cases, deny due process." (2 Witkin, Cal. Procedure (4th ed. 1996) Jurisdiction, § 293, p. 864.) For example, a collateral attack may be made on a default judgment which exceeds that demanded in the complaint because the defendant has a right to assume the judgment will not exceed that claimed. (*Burtnett v. King* (1949) 33 Cal.2d 805.) This logically extends to the case where the defendant is given no notice whatever that a default judgment is to be taken. (Cf. *Reid v. Balter* (1993) 14 Cal.App.4th 1186, 1193; *Lovato v. Santa Fe Internat. Corp.* (1984) 151 Cal.App.3d 549, 553-554.)

Appendix A

Plaintiff has alleged she was not given notice that her default was taken or that a default judgment was entered against her. In opposition to the defendants' motion for summary judgment, she claimed she never received the order permitting her former attorney to withdraw, never received the order striking her answer, and never received the default judgment. She argues that the failure of the defendants and the court to serve her, at her residence address, the order compelling discovery, the order striking her answer, and any notice that a default judgment would be entered against her, deprived her of adequate notice and a hearing. She claims this as a failure of due process which deprived the trial court of jurisdiction to enter a default judgment against her, rendering the judgment void.

Defendants have not adduced evidence to controvert plaintiff's claim she had no actual notice that her answer had been stricken and that a default judgment had been entered against her. This leads to the question whether the notice Garcia properly received gave her constructive notice sufficient to cure the harm otherwise attributable to the failures of notice.

In *Lovato v. Santa Fe Internat. Corp., supra*, 151 Cal.App.3d pages 553-554, the court held the defendant did not receive notice of a discovery motion, a motion for terminating sanctions for failure to comply with discovery, subsequent entry of default, or default judgment, because the notices were sent to the defendant's disbarred attorney, whom the defendant had fired. In holding the default judgment void, the court stated: "[t]he default judgment is void under the due process clause of the federal constitution

unless [defendant] had actual or constructive notice of the interrogatories and discovery motions. [Citation.]" (*Id.* at p. 553.) There was no actual notice and the court held that service on a disbarred attorney did not constitute constructive service. "Under these circumstances the judgment is not merely voidable, but void for lack of notice." (*Id.* at p. 554.)

Code of Civil Procedure section 1013, subdivision (a), provides service shall be to a person at "the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence." Effective service by mail requires strict compliance, and failure to comply deprives the court of jurisdiction. (*Lee v. Placer Title Co.* (1994) 28 Cal.App.4th 503, 509.)

In this case several of the notices to Seferina Garcia did not comply with Code of Civil Procedure section 1013, subdivision (a). The last address given on any document filed with the court was Garcia's residence address on North Filbert Street, Stockton. Garcia has alleged she was given no notice that her default was being entered or that a default judgment was being entered against her. Instead, these documents were mailed to 2512 East Lafayette in Stockton.

However, Seferina Garcia did receive valid notice at the North Filbert address of a "Notice of Motion and Motion for Terminating Sanctions" and that a calendar setting would be held on December 28, 1993. As noted, it reasonably can be inferred that the "Notice of Motion and Motion for Terminating Sanctions" informed Garcia of the grounds of the motion, the failure to respond to discovery, and the date

of the hearing on the motion. Thus, Garcia was properly given notice that sanctions were being sought. Had she attended the sanctions hearing, Garcia would have been apprised of the sanctions order and if she had attended court on the date set for a calendar conference, she would have been apprised that a default judgment was being entered. She attended neither.

If Seferina Garcia had responded to the motion for sanctions or attended the sanctions hearing, she would have had an opportunity to cure whatever defects she perceived in the motion. If she had attended the calendar conference she would have had an opportunity to appeal from the default judgment. In these circumstances Garcia cannot show that she was harmed by the failures of notice.

Seferina Garcia is not entitled to collaterally attack the default judgment.

II

The Validity of the Seizure
of the Personal Property

Seferina Garcia also challenges the seizure of her personal property as taken without the benefit of legal process. She says: "It is the entry, search and seizure without warrant that constitute[s] the violations of which plaintiff is suing." She claims that "[t]he invasion of the County into Plaintiff's residence and house and the ensuing seizure of all personal property located thereat, and disposal of same, and the eviction of plaintiff from the property required a

warrant or comparable order under the Fourth Amendment to the United States Constitution."

A

The Facts

On March 22, 1995, officers from the Stockton Police Department at the direction of the district attorney went to the 1964 North Filbert Street house "to take charge of it," apparently pursuant to the judgment of forfeiture of the real property previously entered.

The occupant, Rosalina Diaz, told the officers that none of the property was hers and she believed it belonged to Octavio Garcia. One of the officers telephoned Deputy District Attorney Phillip Urie who averred they informed him that "in seizing the real property . . . [they] had located over $1500 in cash and new and expensive-looking electronic equipment and other items typically purchased or taken in trade by drug dealers, including multiple TV's and VCR's, two lawn mowers, appliances, furniture and tools." He also stated the officer had information the personal property belonged to Octavio Garcia. "Based on [this] information . . . and the information from the original investigation in 1993, [Urie] authorized the initiation of administrative forfeiture proceedings as to the items of personal property."

The officers delivered a "Notice of Non-Judicial Forfeiture Proceedings" to Diaz describing the subject property as "Cash 1,518.00" and "Misc. property — attached copy" with an appraised value of $4,518. The copy is not in

the record. Subsequently, on April 12, 19 and 26, 1995, a notice was published listing the property seized as $1,518 in cash and specified electronic items, lawn mowers and tools.

As noted the personal property was seized at the direction of the district attorney, who is not a party to this action, incident to the seizure of the real property by Stockton City Police. Some of it then was removed by representatives of Roger Ernst & Associates Auctioneers and sold "[p]ursuant to the terms of an agreement [between the district attorney and] Roger Ernst & Associates Auctioneers, [who] directed them to auction to the public both the real and personal property in this asset forfeiture matter."

Thereafter, on June 7, 1995, the district attorney issued a "Declaration of Non-Judicial Forfeiture," listing the same items set out in the published notice. The procedure is authorized pursuant to section 11488.4 subdivision (j).

B

Personal Property

Seferina Garcia may not complain of the taking of the personal property as seized without a warrant or legal process. It was removed from the residence incident to the seizure of the real property. The seizure of the real property was authorized pursuant to section 11471. It provides in pertinent part:

> "Seizure [of property subject to forfeiture] may be made if any of the following situations

> exist: [¶] (a) The seizure is incident to an arrest or search under a search warrant. [¶] (b) The property . . . has been the subject of a prior judgment in favor of the state in a . . . forfeiture proceeding based on this division."

Under this provision a lawful arrest or search warrant is not required for the seizure of property if a judgment of forfeiture of the property has been entered. As discussed above, a judgment for the forfeiture of the real property at 1964 North Filbert Street was entered on December 28, 1993, well prior to its seizure and that judgment is not subject to challenge. That entitled the state to take possession of the property.

In a belated argument Garcia claims that section 11471 does not mean what it says by virtue of section 11491[5] or is impliedly unconstitutional under such cases as *Soldal v. Cook County* (1992) 506 U.S. 56 [121 L.Ed.2d 450]. Soldal held the Fourth Amendment's protection against unreasonable seizures barred the removal of a trailer home from a mobile home park in the absence of an order of eviction. The court reasoned that a " 'seizure' of property . . . occurs when 'there is some meaningful interference with an individual's possessory interests in that property.' " (*Id.* at p. 56 [L.Ed.2d at p. 455].) It said that reasonableness was the touchstone

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5. Section 11491 provides that "[n]othing in this chapter shall be construed to extend or change decisional law as it relates to the topic of search and seizure." Since section 11471 plainly distinguishes between seizure pursuant to an arrest or search warrant and seizure pursuant to a judgment of forfeiture, it cannot mean what Garcia claims. That leads to the constitutional argument.

and the decision "will have no impact on activities such as repossessions or attachments" because they impliedly are based on a judicial proceeding, citing inter alia to *Fuentes v. Shevin* (1972) 407 U.S. 67 (32 L.Ed.2d 556). (*Soldal, supra*, 506 U.S. at p. 71 [121 L.Ed.2d at p. 465].) In *Fuentes* the court overturned, as in violation of the due process clause of the Fourteenth Amendment, the prejudgment repleven law of Florida and Pennsylvania which authorized the summary seizure of goods and chattels upon an ex parte application. The court ruled the seizure of goods required a prior opportunity to be heard before seizure at which the "creditors have tested their claim to the goods through the process of a fair prior hearing." (p. 579.) However, "[t]he nature and form of such prior hearings . . . are legitimately open to many potential variations and are a subject . . . for legislation . . . ." (*Ibid.*)

In this case the legislature has determined that the procedures for the forfeiture of real property, which provide for a hearing at which to contest the forfeiture, provide a sufficient justification for the seizure of the real property following the judgment of forfeiture. Garcia has made no focused argument why the statutory forfeiture procedure contravenes the Fourth or the Fourteenth Amendments and in the posture of this case. The possessory interest which she claims was forfeited, gives the People the statutory right to seize the property.

Having obtained a legal right to the real property, the state had a right to remove the personal property on the premises from the residence. Under the analogous remedies provided a judgment creditor, personal property remaining on real property in the lawful possession of the creditor may

be taken into custody by the creditor and is subject to disposition pursuant to Code of Civil Procedure section 1174, subdivisions (e) to (m). (Code Civ. Proc., § 715.030.) Those subdivisions provide inter alia that the personal property may be sold if abandoned or stored in a place of safekeeping pending further specified means of lawful release.

Although these sections do not deal precisely with the problem at hand, they support the view that personal property seized incident to the lawful seizure of real property may be stored pending a sale pursuant to an administrative forfeiture proceeding.

The trial court ruled that Seferina Garcia had no standing to challenge the forfeiture of personal property because she failed to file a timely claim pursuant to section 11488 et seq. The plaintiff does not challenge the administrative forfeiture provisions but only the initial seizure of the personal property. As noted, "[i]t is the entry, search and seizure without warrant that constitute[s] the violations of which plaintiff is suing." For these reasons, plaintiff has waived any claim that the personal property was improperly forfeited.

III

Sanctions

Plaintiff appeals two separate sanction awards against her.

The first sanction award stems from an application to strike the summary judgment motion of the Foppianos and

Home Savings. On May 10, 1996, the Foppianos filed a motion for summary judgment. In this first summary judgment motion, the Foppianos argued summary judgment should be granted because they were bona fide purchasers and because plaintiff's action was untimely.

The Foppianos and Home Savings filed the second summary judgment motion on March 12, 1998. This second motion argued collateral attack of the default judgment was inappropriate because the default judgment was not void on its face, because the action was untimely, and because the Foppianos were bona fide purchasers.

In response to the second motion for summary judgment, plaintiff filed an ex parte application requesting an order striking or vacating the summary judgment motion pursuant to Code of Civil Procedure section 1008 (section 1008). Section 1008 provides in pertinent part: "A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. For a failure to comply with this subdivision, any order made on a subsequent application may be revoked or set aside on ex parte motion."

The Foppianos and Home Savings opposed the ex parte application and requested sanctions against plaintiff, claiming the ex parte application was frivolous and brought

for the sole purpose of harassment and delay and to increase the cost of defense. The Foppianos and Home Savings asked for sanctions in the amount of $3,190. The court denied plaintiff's application to strike, even though the summary judgment motion did not contain an affidavit containing the information required by section 1008. The trial court sanctioned plaintiff in the amount of $750.

Plaintiff now claims the court erred in imposing sanctions because the Foppianos and Home Savings failed to comply with the requirements of section 1008.[6] Since this was Home Savings's first motion for summary judgment, it was not required to comply with section 1008. The motion to strike was frivolous as to Home Savings. As the amount imposed as sanctions was less than half the amount requested by the Foppianos and Home Savings together, we cannot say the court abused its discretion in imposing sanctions.

The second sanctions award plaintiff challenges on appeal was awarded upon the motion of all defendants. Defendants claimed they arranged to take plaintiff's deposition twice. The first time her attorney announced at the deposition she would only be available for two hours. The second time her attorney refused to let her answer questions. Finally, the court compelled her deposition. At the compelled deposition, her attorney made personally derogatory comments to defense counsel, called them names,

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6. Plaintiff argues for the first time on appeal that both sanction motions should have been brought pursuant to Code of Civil Procedure section 128.7. Plaintiff has waived this argument for failure to raise it below. (*In re Marriage of Peters* (1997) 52 Cal.App.4th 1487, 1490.)

swore at them, made rude statements, and instructed his client not to answer, necessitating another motion to compel.

Plaintiff claims the sanctions award was improper because items 1(a) through 1(f) of the order had previously been addressed by the prior sanctions order and there was no factual basis for any sanctions. Plaintiff argues the sanction order is defective because Business and Professions Code section 6068, subdivision (f) is unconstitutionally vague.[7] She claims her counsel was engaging in protected speech, and that his statements were so slight and incidental that sanctions were inherently unreasonable.

We need not address any of these claims. Plaintiff has waived them for failure to raise them below. (*In re Marriage of Peters*, *supra*, 52 Cal.App.4th 1487, 1490.)

Defendants' motion for sanctions for a frivolous appeal is denied.

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7. The order states in part: "Sanctions shall be imposed on Plaintiff's counsel Frear Stephen Schmid in the amount of $1,001.00 for violation of Business and Professions Code section 6068, subdivision (f) among other violations . . . ." Business and Professions Code section 6068, subdivision (f) states it is the duty of an attorney to "abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged."

Appendix A

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P.J.

We concur:

DAVIS, J.

HULL, J.

APPENDIX B — ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN, STOCKTON BRANCH GRANTING MOTION FOR SUMMARY JUDGMENT DATED AND FILED MARCH 15, 1999

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**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN JOAQUIN
STOCKTON BRANCH**

CASE NO. 287280

SEFERINA GARCIA,

Plaintiff

vs.

ROGER ERNST & ASSOCIATES, STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, CECIL SECURITY, JERI AND ERNEST FOPPIANO, HOME SAVINGS OF AMERICA, and DOES 1 through 100,

Defendants.

Appendix B

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

The motion of defendants County of San Joaquin and Roger Ernst & Associates for summary judgment and/or summary adjudication was filed and came on for hearing on Thursday, January 28, 1999 at 9:00 a.m. in Department No. 42 before the Honorable Carter B. Holly of the above-entitled court. On January 27, 1999, pursuant to the Court's Local Rules, a ruling was issued tentatively granting the Motion for Summary Judgment, for all defendants as to all causes of action. Counsel for plaintiff, Frear Stephen Schmid, requested further argument on the court's tentative ruling.

On January 28, 1999, Frear Stephen Schmid, Attorney at Law, appeared on behalf of plaintiff Seferina Garcia. Shelley Green, Deputy County Counsel, appeared on behalf of defendants County of San Joaquin and Roger Ernst & Associates.

The Court, after having considered all the proper evidence set forth in the papers submitted, and the inferences reasonably deducible therefrom, and having heard and considered the oral arguments of counsel and having determined that there is no triable issue as to any material fact, finds defendants County of San Joaquin and Roger Ernst & Associates are entitled to judgment as a matter of law, for the following reasons:

1. The County of San Joaquin is an improper party to this action since it cannot be responsible for the actions of state officials. There was no involvement of the County in

the acts complained of in the complaint. The district attorney of San Joaquin County and his deputies were representing the State of California in all aspects of the underlying asset forfeiture action which forms the allegations of the present lawsuit. *Pitts v. County of Kern* (1998) 17 Cal.4th 340.

2. There is no triable issue of material fact as to Roger Ernst & Associates as their only involvement in the matter was auctioning the property pursuant to court order.

3. There is no triable issue of material fact as to conversion as to the County of San Joaquin and Roger Ernst & Associates as plaintiff has no standing to challenge the non-judicial forfeiture of the personal property, as she failed to file a timely claim pursuant to California Health and Safety Code § 11488 et seq.

4. There is no triable issue of material fact as to Roger Ernst & Associates as the Court finds all their acts were appropriate pursuant to California Health and Safety Code § 11488 et seq.

5. There is no triable issue of material fact as to any cause of action as to the County of San Joaquin and Roger Ernst & Associates as plaintiff's collateral attack of the default judgment entered in the underlying action is improper because the trial court in the underlying asset forfeiture action, *People of the State of California v. Garcia*, San Joaquin Superior Court No. 253049, did not lack personal jurisdiction or subject matter jurisdiction over plaintiff.

6. There is no triable issue of material fact as to any cause of action as to County of San Joaquin and Roger Ernst

& Associates as the judgment entered in the underlying drug forfeiture action is not void on its face based upon the opinion of the Court of Appeals of the State of California, Third Appellate District, dated October 23, 1998.

7. There is no triable issue of material fact as to any cause of action as to County of San Joaquin and Roger Ernst & Associates as plaintiff's challenge to the default judgment in the underlying asset forfeiture action is untimely.

The Court considered only relevant and competent evidence. *Biljac Associates v. First Interstate Bank* (1990) 218 Cal.App.3d 1410, 1420).

IT IS ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment of defendants County of San Joaquin and Roger Ernst & Associates is GRANTED as to all causes of actions asserted against them, and that judgment will be entered in their favor and against plaintiff Seferina Garcia.

Dated: MAR 15 1999

[stamp] CARTER P. HOLLY
HONORABLE CARTER P. HOLLY
JUDGE OF THE SUPERIOR COURT

Approved as to form:

_____

Frear Stephen Schmid
Attorney for Plaintiff

APPENDIX C — ORDER OF THE SUPREME COURT OF CALIFORNIA DENYING PETITION FOR REVIEW DATED AND FILED JUNE 13, 2001

Court of Appeal, Third Appellate District – No. C032796
S096835

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SEFERINA GARCIA,

Plaintiff and Appellant,

v.

COUNTY OF SAN JOAQUIN et al.,

Defendants and Respondents.

Petition for review DENIED.

The request for an order directing partial publication of the opinion is denied.

[stamp] GEORGE
Chief Justice

APPENDIX D — DEFAULT JUDGMENT AND ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN IN *THE PEOPLE OF THE STATE OF CALIFORNIA v. LAND, BUILDINGS AND FIXTURES LOCATED AT 1964 N. FILBERT, STOCKTON, CALIFORNIA* DATED AND FILED DECEMBER 28, 1993

JOHN D. PHILLIPS
District Attorney
San Joaquin County
By: PHILLIP R. URIE
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Attorney for Plaintiff

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN JOAQUIN

No. 253049

The People of the State of California,

Plaintiff,

v.

LAND, BUILDINGS AND FIXTURES LOCATED AT 1964 N. FILBERT, STOCKTON, CALIFORNIA,

Defendant(s),

Appendix D

MIQUEL YANEZ, SEFERINA GARCIA
& OCTAVIO GARCIA GARCIA,

Claimant(s).

DEFAULT JUDGMENT & ORDER

This action came on regularly for trial on December 28, 1993, at 8:45 a.m. in Department One of the above entitled Court. Phillip R. Urie appeared as attorney for the People of the State of California. The answer of Miquel Yanez having been previously stricken by this court on November 23, 1993; the answer of Seferina Garcia having been previously stricken by the court on December 21, 1993; and Claimant Octavio Garcia Garcia, having been regularly served with process, having failed to appear and answer plaintiff's complaint within the time allowed by law and defendant's default having been entered on May 17, 1993, proof of service of process and of the allegations of plaintiff's complaint having been made to the Court's satisfaction,

IT IS ORDERED, that the.the interests of Claimants Miquel Yanez, Seferina Garcia and Octavio Garcia Garcia in the defendant land, buildings and fixtures located at 1964 N. Filbert, and further described as:

> Lot 7 in Block 2 of Hyland Addition, According to the Official Map or Plat thereof filed for record on January 25, 1913, in book 6 of Maps and Plats, Page 55, San Joaquin County Records.

is forfeited to the State of California pursuant to subdivision (f) of section 11470 of the Health and Safety Code in that

the defendant property is property traceable to proceeds of controlled-substance transactions.

IT IS FURTHER ORDERED that, pursuant to Health and Safety Code sections 11488.5(i) and 11489, the defendant real property be disposed of by sale or auction and that the Clerk of the Court shall execute all conveying documents, including, but not limited to, escrow instructions and Deed of Conveyance, in connection with the conveyance of the defendant real property to the buyer on behalf of the State of California; the District Attorney's office and its agents shall direct, co-ordinate and assist he Clerk of the Court in disposing of the defendant real property by sale or auction without further review or approval by any other state agency pursuant to Health and Safety Code section 11489.

IT IS FURTHER ORDERED that all legitimate and usual costs, commissions, prorated taxes, and valid liens and encumbrances of record shall be paid from escrow and that the remaining funds all be delivered to the Clerk of the Court to be distributed and disbursed pursuant to Section 11489 of the Health and Safety Code.

Dated: 12/28/93

s/ Michael N. Garrigan
Michael N. Garrigan, Judge